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Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 1719

LAMAR LIFE BROADCASTING COMPANY,

Petitioner,

—v.—

FEDERAL COMMUNICATIONS COMMISSION, UNITED STATES OF AMERICA, CHANNEL 3, INC. CIVIC COMMUNICATIONS CORP., COMMUNICATIONS IMPROVEMENT, INC., DIXIE NATONAL BROADCASTING CORPORATION, JACKSON TELEVISION, INC.,

Respondents.

OPPOSITION OF RESPONDENT DIXIE NATIONAL BROADCASTING CORPORATION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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Respondent Dixie National Broadcasting Corporation respectfully submits that the question presented in the above-captioned Petition For A Writ Of Certiorari is not properly before this Court.

The gravamen of the claim presented by Petitioner is that the Commission improperly interpreted Section 307(d) of the Communications Act of 1934, as amended, 47 U.S.C. Section 307(d), and Section 9(b) of the Administrative Procedure Act, 5 U.S.C. Section 558(c), in suspending op-

eration of Station WLBT prior to final agency determination as to whether the pending application for renewal of license of WLBT should be granted or denied.

It is obvious, from a reading of the Commission decision under review[1] that Petitioner's quarrel is with a prior decision of the United States Court of Appeals for the District of Columbia Circuit, decided June 20, 1969,[2] reconsideration denied September 5, 1969.[3] The Commission was merely carrying out a directive of the Court of Appeals in enunciating the statutory interpretation complained of here.[4]

Indeed, after the issuance of the June 20, 1969 decision by the Court of Appeals, the Commission and Petitioner itself returned to that Court urging rehearing, clarification of the Court's opinion, and suggestions for rehearing *en banc*. When the United States Court of Appeals for the District of Columbia Circuit denied the requests of the Commission and Petitioner for rehearing, for clarification, and suggestions for *en banc* hearing, on September 5, 1969, there was simultaneously issued the Statement of Judges McGowan and Tamm Accompanying The Vote To Deny The Petition Of The Federal Communications Commission For Rehearing By The Panel Or En Banc.[5] From a reading of that Statement it is manifest that Petitioner

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[1] See pp. 1-22 of the Appendix to the above-captioned Petition.

[2] See pp. 25-28 of the Appendix to the Petition.

[3] See pp. 39-42 of the Appendix to the Petition.

[4] See especially pp. 1-6 of the Appendix and the concurring opinion of Chairman Burch, at pp. 20-21 of the Appendix.

[5] Petition, Appendix, pp. 40-42.

has attempted to resurrect in another—and later—proceeding the very rationale of the Commission rejected by the Court of Appeals. Petitioner did not choose to pursue available remedies in this Court in 1969 to perfect review of the very question presented in the instant Petition.

Accordingly, notwithstanding the representations made here for the first time,[6] the instant Petition is not properly before this Court. Petitioner comes too late; the unequivocal language of the Statement of Judges McGowan and Tamm forecloses the reinstatement of an argument which Petitioner effectively waived by not seeking review of the 1969 rulings of the United States Court of Appeals for the District of Columbia Circuit. See *Bird* v. *United States*, 241 F. 2d 516 (1st Cir., 1957).

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[6] Petition, p. 5 at fn. 10. No such representation was made to the Commission or to the Court of Appeals below.

CONCLUSION

In light of the foregoing, it is respectfully submitted that the Petition For Writ Of Error should be denied.

Respectfully submitted,

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